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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,182	03/10/2004	Rainer Muller	05725.1271-00	4387

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EXAMINER	
YU, GINA C	

ART UNIT	PAPER NUMBER
1617	

MAIL DATE	DELIVERY MODE
07/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/796,182	MULLER ET AL.	
	Examiner	Art Unit	
	Gina C. Yu	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-39 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) 1-39 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-32, 34-37, drawn to a detergent composition, classified in class 510, subclass 119.

II. Claims 1-30, 33 in part, 34-37, drawn to a conditioner, classified in class 424, subclass 70.1.

III. Claims 1-30, 33 in part, 34-37, drawn to permanent-waving, relaxing composition, classified in class 424, subclass 70.2

IV. Claims 1-30, 33 in part, 34-37, drawn to bleaching composition, classified in class 424, subclass 62.

V. Claims 1-30, 33 in part, 34-37, drawn to a dyeing composition, classified in class 8, subclass 405.

VI. Claim 38 and 40, method of making a cosmetic composition, classified in class 524, subclass 272, or class 424, subclass 401.

VII. Claim 39, method for suspending a cyclodextrin complex in a composition, classified in class 516, subclass 64.

Inventions I and II are directed to distinct products. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the

inventions as claimed, detergents and conditioning products are different formulations and have different method of use, function, and effect on a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping subject matter since the detergent composition requires foaming agents that are not required by invention II.

Inventions I and III are directed to distinct products. In the instant case, the inventions as claimed, detergents and permanent-waving or relaxing compositions are different formulations and have different method of use, function, and effect on a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping subject matter since invention I requires foaming agents while invention III must have a hair restructuring agent, there is nothing of record to show them to be obvious variants.

Inventions I and IV are directed to distinct products. In the instant case, the inventions as claimed, a detergent and a bleaching composition are different in formulations, method of use, and function, and have different effects on a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping subject matter since invention I requires foaming agents while invention IV must have a bleaching agent, and there is nothing of record to show them toe be obvious variants.

Inventions I and V are directed to distinct products. In the instant case, the inventions as claimed, a detergent and a dyeing composition are different formulations and have different method of use of, and different function and effect on a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping

subject matter since invention I requires foaming agents while invention V must have a dyeing agent, and there is nothing of record to show them toe be obvious variants.

Inventions I and VI are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process of invention VI can be used to make a composition other than a detergent.

Inventions I and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, invention I has utilities that are different from suspending a cyclodextrin complex, such as cleaning a keratinous material.

Inventions II and III are directed to distinct products. In the instant case, the inventions as claimed, a conditioner and permanent-waving or relaxing compositions are different formulations and have different method of use of, and function and effect on, a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping subject matter since invention III must have a hair restructuring agent.

Inventions II and IV are directed to distinct products. In the instant case, the inventions as claimed, a conditioner and a bleaching composition are different in

formulations, method of use, and function, and have different effects on a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping subject matter since invention IV must have a bleaching agent.

Inventions II and V are directed to distinct products. In the instant case, the inventions as claimed, a conditioner and a dyeing composition are different formulations and have different method of use of, and different function and effect on, a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping subject matter since invention V must have a dyeing agent.

Inventions II and VI are related as process of making and product made. In the instant case the process of invention VI can be used to make a composition other than a conditioning composition.

Inventions II and VII are related as product and process of use. In the instant case, invention II has utilities that are different from suspending a cyclodextrin complex, such as conditioning a keratinous material.

Inventions III and IV are directed to distinct products. In the instant case, the inventions as claimed, a permanent-waving or straightening composition and a bleaching composition are different in formulations, and have different method of use of, and function and effects on, a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping subject matter since invention III requires a hair restructuring agent and IV must have a bleaching agent.

Inventions III and V are directed to distinct products. In the instant case, the inventions as claimed, a permanent-waving or straightening composition and a dyeing

composition are different in formulations, and have different method of use of, and function and effects on, a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping subject matter since invention III requires a hair restructuring agent, while invention V must have a dyeing agent.

Inventions III and VI are related as process of making and product made. In the instant case the process of invention VI can be used to make a composition other than a hair perming or straightening composition.

Inventions III and VII are related as product and process of use. In the instant case, invention III has utilities that are different from suspending a cyclodextrin complex, such as permanent shaping hair.

Inventions IV and V are directed to distinct products. In the instant case, the inventions as claimed, a bleaching and a dyeing composition are different in formulations, and have different method of use of, and function and effects on, a keratinous material. Furthermore, the inventions as claimed do not encompass overlapping subject matter since invention IV requires a hair bleaching hair, while invention V must have a dyeing agent.

Inventions IV and VI are related as process of making and product made. In the instant case the process of invention VI can be used to make a composition other than a bleaching composition.

Inventions IV and VII are related as product and process of use. In the instant case, invention III has utilities that are different from suspending a cyclodextrin complex, such as bleaching hair.

Inventions V and VI are related as process of making and product made. In the instant case the process of invention VI can be used to make a composition other than a dyeing composition.

Inventions V and VII are related as product and process of use. In the instant case, invention III has utilities that are different from suspending a cyclodextrin complex, such as dyeing hair.

Inventions VI and VII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the inventions are different because invention VII is directed to a suspending cyclodextrin complex in a cosmetic composition, while invention VI is a method of making a cosmetic composition which does not require suspension of cyclodextrin (e.g., limitations do not require the specific types of surfactants or the weight amount required to make a suspension).

These inventions are independent or distinct for the reasons given above, and the inventions have acquired a separate status in the art in view of their different classification and their recognized divergent subject matter. The inventions require a different field of search, and there would be a serious burden on the examiner if restriction were not required. Thus restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu
Patent Examiner